IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL APPLICATION NO.2531 OF 2004
IN
WRIT PETITION NO.5631 OF 1995

Ashok Dhumal — Applicant (Org. Respondent)

Vs.

Bajaj Auto Ltd. — Respondent (Org.Petitioner)

WITH

CIVIL APPLICATION NO.763 OF 2005
IN
WRIT PETITION NO.5631 OF 1995

Bajaj Auto Ltd. — Petitioner

Vs.

Shri Ashok Dnyanoba Dhumal & anr. — Respondents

Mr.J.P.Cama, Sr.Counsel with Ms.Swati Deshpande i/b. M/s.Bhodhanwalla & Co. for petitioner-company.

Ms.Seema Sarnaik for respondent-workman.

CORAM: B.H.MARLAPALLE,J.
July 22, 2005.

ORAL ORDER:

1. Both these applications could be disposed off by a common order as they are filed in Writ Petition No.5631 of 1995. The first application is filed by the respondent-workman whereas the second application

is filed by the petitioner-management.

2. The first Labour Court at Pune by its award dated 29.6.1995 passed in Reference (IDA) No.36 of 1990 had directed the reinstatement with continuity in service with backwages. This award published in the Maharashtra Government Gazette on 7-9-1995 came to be challenged in Writ Petition No.5631 of 1995. On 24-11-1995 the petition was admitted. The order of interim relief which was a conditional order read as under:

> "Interim stay of impugned Award in terms of prayer (b) on condition that petitioner deposits the entire amount of backwages in this Court within four weeks. Petitioner to file within four weeks a detailed statement of backwages payable to I Respondent with copy served on I respondent.
>
> If amount is deposited to be invested in a fixed Deposit of Nationalised Bank for such suitable period as decided by Registrar and fixed Deposit to be kept renewed from time to time during the pendency of the Writ petition.
>
> Miss Sarnaik waives service. Notice to II Respondent not necessary as he is a formal party."

3. It is thus clear that the interim relief was granted in favour of the petitioner-company subject to condition of deposit of the entire amount of

backwages within four weeks but the company failed to deposit the said amount for whatever reasons. It appears that Civil Application No.2345 of 1996 was filed for seeking leave to extend the period for deposit and along with the said application Demand Draft for an amount of Rs.2,75,131 was sought to be placed on record for depositing the said amount with the Registrar in compliance with the order dated 24-11-1995. The Civil Application was disposed off by the order dated 21-6-1996 but there was no indication whether the time to deposit was extended thereby granting liberty to the company to deposit the said amount. Nonetheless the company was called upon to comply with the requirements of Section 17-B of the I.D. Act forthwith. It was also noted that by reason of compliance with the said requirements the company would pay to the workman a sum of Rs.4500/- per month from 29-6-1995 till the final disposal of Writ Petition No.5631 of 1995. It is claimed by the petitioner-company that though its Civil Application No.2345 of 1996 came to be disposed off by the order dated 21-6-1996 they could not still deposit the amount of backwages calculated at Rs.2,75,130/-. The petition was listed before this Court in order category and on 21-2-1997 this Court

passed the following order:

"S.O. for two weeks.

If objections are not removed in 2 weeks, the matter shall stand dismissed for non-prosecution without reference to the Court."

. On 12/3/1997 the petition came to be dismissed for non-prosecution without reference to the Court. The company has made, therefore, civil application and prayed for condonation of delay in applying for restoration, restoration of the petition and permission to deposit the amount of backwages as per the original order dated 24-11-1995.

4. Vide order dated 24-6-2005 I had directed the Registrar (Judicial) to enquire and submit a report on the allegations made by the learned counsel for the applicant as set out in the said order. The Registrar (Judicial) has submitted her report dated 7-7-2005 and stated that the second part of Writ Petition No.5631 of 1995 is destroyed on expiry of a period of three years from the date of dismissal of the writ petition and, therefore, the details of the objections could not be found. She has further noted that the Department had made a note that the

objections were not removed. Whereas the learned Advocate for the applicant contended that the objections were removed. When the nature of objections were enquired with the learned Advocate for the company, the Registrar was informed that the present Advocate was not the Advocate on record at the relevant time and, therefore, the exact office objections were not known.

5. Mr.Cama, the learned senior counsel for the company stated that in view of the failure to deposit the amount, there was no reason to dismiss the writ petition in default on 12-3-1997. This submission cannot be accepted as it is noted in the said order that the petition was dismissed on account of failure to deposit the amount of backwages. On failure to deposit the amount of backwages the order of stay granted on 24-11-1995 would automatically stand vacated and, therefore, the respondent-workman would be deemed to be in continuous service with the petitioner-company. The order passed on 21-12-1997 by this Court is an order of dismissal simplicitor for non-prosecution and consequently on 12-3-1997 the petition stood dismissed.

6. In the application filed by the workman directions have been sought for payment of Rs.43,200/- towards arrears of amount as per the order dated 21-6-1996 and for further directions to allow the petitioner to withdraw the amount deposited by the company along with the accrued interest thereon. Obviously the second prayer is based on the belief that pursuant to the order dated 24-11-1995 the company deposited the amount of backwages which indeed did not happen.

7. The petitioner-company is guilty of latches and delays. Mr.Cama, the learned senior counsel stated that the company would place on record a demand draft for an amount of Rs.5,28,330/- towards the compliance of the order dated 24-11-1995 by keeping in mind the interest that would have accrued on the amount of backwages if deposited within a period of four weeks pursuant to the said order. Mr.Cama has placed on record a statement of calculations of interest on fixed deposit and as per the said statement the amount as at present comes to Rs.5,91,581 (amount of maturity as in November 2004). It was, therefore, submitted by the learned senior counsel that when the company is willing to make good

the entire amount of interest that the amount of backwages would have earned on investment in fixed deposits with a nationalised bank, its bona fides should be accepted and the petition should be restored by giving opportunity to the company to deposit the said amount. Ms.Sarnaik disputes the correctness of the amount calculated by the company.

8. Even if the company's prayer for restoration is to be accepted, there are some other facets which also need to be looked into. As noted earlier on failure to deposit the amount of backwages interim stay for reinstatement granted by this Court on 24-11-1995 would automatically stand vacated and the respondent-workman would be deemed to be in service. The company will be, therefore, liable to pay the entire amount of backwages on 24-11-1995 as if the workman was working all along. At the same time, amount of Rs.4500/- or any higher amount that is being paid to him as at present by the company in compliance with Section 17-B of the I.D. Act will have to be adjusted from this entire amount of backwages.

9. Writ Petition No.5631 of 1995 is restored to

file on the following conditions:

(i) The amount of Rs.5,91,581/- should be deposited by demand draft with the Registrar of this Court forthwith.

(ii) The Registrar (Judicial) of this Court shall contact the nearest nationalised bank and obtain the calculations of the amount on maturity with interest on the deposit of Rs.2,75,131/- from November 1995 till 31-10-2005. Such a statement shall be furnished to the learned counsel for the petitioner within a period of two weeks from today and the balance amount, if any, shall be deposited by the company within one week thereafter.

(iii) The entire amount of backwages from November 1995, by treating the respondent-workman as if on duty through out, minus the amount already paid to him under the orders of this Court passed on 21/6/1996 shall be deposited with the Registrar of this Court within a period of four weeks from today.

10. Writ Petition No.5631 of 1996 be added to the present final hearing board as soon as the above

amounts are deposited with the Registrar of this Court.

11. Both the civil applications are disposed off in terms of the above directions.

(B.H.MARLAPALLE,J.)